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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,779	02/08/2001	Jean M. Goldschmidt Iki	42390P6482D	6746
<div>7590 01/30/2008</div> <div>Gordon R. Lindeen III BLAKELY, SOKOLOFF, TAYLOR &amp; ZAFMAN LLP Seventh Floor 12400 Wilshire Boulevard Los Angeles, CA 90025-1026</div>				
			EXAMINER RAMAN, USHA	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 01/30/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/779,779

Applicant(s)

GOLDSCHMIDT IKI ET AL.

Examiner

Usha Raman

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see attached 'Response to Arguments'.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



**CHRIS KELLEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600**

***Response to Arguments***

Applicant's arguments filed December 4<sup>th</sup>, 2007 have been fully considered but they are not persuasive.

While applicant notes that Morrison shows using a default source in the event of the conflict, wherein the default source is selected by the user, applicant argues (see Remarks, page 9) that, "there is no explanation of how this might be done nor setting any other user preferences" and that, "there is further no explanation of how tuning is done internally once user has set the default". Applicant's arguments are respectfully traversed for the following reasons. In setting a "default preference" by the user, examiner notes that such a default preference is stored because the system remembers in the event of conflict, what default source to tune to. Furthermore, Morrison discloses that the system initially tunes to a default source in the event of a conflict, while providing a user a menu to select alternative sources. If within a predetermined an alternative source is not selected by the user, the system remains tuned to the default source. See Morrison: column 2, lines 58- column 3, line 2. Accordingly Morrison shows both, setting a user preference for a default source selection that is used as the default tuner in the event of conflict.

Applicant further argues (see Remarks page 9) that, "Neither [Schein nor Morrison] reference is about identifying multiple versions of a particular program and then selecting one of the versions using user preferences". Examiner respectfully disagrees with applicant's assertions, as Schein is specifically concerned with identifying multiple occurrences of a particular program. As noted in the Final Office

Action, there exist scenarios where user may receive the same programs on same networks from multiple sources (e.g. NBC on cable and NBC on DBS) and therefore comprises the step of identifying multiple versions of the show in such scenarios, as taught by Schein. Morrison further teaches a step of selecting default source as set by the user, thereby in the event of multiple occurrences identified, selecting to a default user preferred source. Rosser is further relied upon for the teaching of selecting a particular content version that matches most with the set of user preferences.

Finally it is noted that all the claimed elements including the steps identifying multiple occurrences of programs, selecting default sources based on user preference, and selecting program version that most match user characteristics were known in the prior art and one skilled art could have combined the elements as claimed by known methods with no change in their respective functions and with the combination yielding predictable results to one of ordinary skill in the art at the time of the invention. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (US 2007)

For the reasons stated above and for the reasons set forth in the Final Office action, the rejection is sustained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Usha Raman whose telephone number is (571) 272-7380. The examiner can normally be reached on Mon-Fri: 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone

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number for the organization where this application or proceeding is assigned is 571-  
273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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